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**Congress of the United States**  
**House of Representatives**  
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CLIMATE CRISIS

July 16, 2019

471

The Honorable Ajit V. Pai  
Chairman  
Federal Communications Commission  
455 12th Street, Southwest  
Washington, DC, 20544

Dear Chairman Pai,


I write regarding the Federal Communications Commission's (FCC) docket titled "Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as Amended by the Cable Television Consumer Protection and Competition Act of 1992" (MB Docket No. 05-311).

Under the Cable Communications Act of 1984, towns and cities across the country can require cable operators to pay franchise fees and provide other community support, which in turn fund PEG stations and other local services. The FCC's current proposal would allow cable operators to unilaterally assign a value to these channels and take that amount from their total obligation. This would mean cities and towns would be faced with less funding for local services and public, educational, or governmental (PEG) channels.

This proposal would put at risk critical funding for PEG stations as well as broadband connections to schools and other public buildings. I've heard concerns from constituents who rely on PEG stations to fill a critical need in their communities by providing channels to monitor local government proceedings, educational programming, local news, and other locally produced programming, and I've heard from stakeholders and community media organizations who provide that important programming.

PEG stations are essential to civic engagement and public education. At a time of increasing medial consolidation, PEG stations are an important platform for local, independent voices to be heard. Ahead of the FCC's vote on this matter in August, I urge you to consider the impacts that this proposal would have on communities in my district and across the country.

Sincerely,



Jared Huffman  
Member of Congress

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FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

July 30, 2019

The Honorable Jared Huffman  
U.S. House of Representatives  
1406 Longworth House Office Building  
Washington, DC 20515

Dear Congressman Huffman:

Thank you for your letter regarding the impact that the statutory cap on franchise fees has on funding for public, educational, or governmental (PEG) channels. The Commission recently released the attached draft *Third Report and Order*, which the Commission plans to consider during its upcoming August meeting. While this draft may change in response to further input from stakeholders and Commissioners, you will see that it addresses in detail each of the concerns raised in your letter.

As you know, the Communications Act limits franchise fees to five percent of cable revenues and defines "franchise fee" to include "any tax, fee, or assessment of any kind imposed by a franchising authority or other governmental entity on a cable operator or cable subscriber, or both, solely because of their status as such." 47 U.S.C. § 542(g)(1). In *Montgomery County, Md. et al. v. FCC*, the U.S. Court of Appeals for the Sixth Circuit held that the terms "tax" and "assessment" were broad enough to encompass nonmonetary exactions—such as cable-related, in-kind contributions. 863 F.3d 485, 490-91 (6th Cir. 2017). But the court held that just because the statutory definition of "franchise fee" *could* include such nonmonetary contributions did not necessarily mean that it *did* include them, and it remanded the issue to the Commission for further consideration. *See id.* at 491-92.

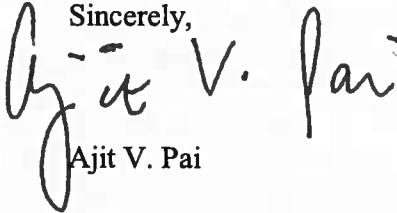
In response to this remand, the Commission unanimously issued its *Second Further Notice of Proposed Rulemaking* to consider the scope of the congressionally-mandated statutory limit on franchise fees. The Commission developed a voluminous record in response to this notice, including numerous submissions from local franchising authorities, providers of PEG programming, and cable operators.

The draft order is the product of our careful consideration of this record. The result, we believe, is both consistent with the Act and responsive to your concerns regarding PEG programming. Among other things, the Commission observed that Congress broadly defined franchise fees; indeed, with respect to PEG channels, it only excluded support payments with respect to franchises granted prior to October 30, 1984 as well as certain capital costs required by franchises granted after that date. 47 U.S.C. §§ 542(g)(2)(B) & (C). The draft order therefore concludes that cable-related, in-kind contributions—including PEG-related contributions—are "franchise fees" subject to the Act's five-percent cap unless otherwise expressly excluded.

Page 2 – The Honorable Jared Huffman

At the same time, the order defers ruling on the complex issues raised by PEG channel capacity and concludes that the costs of providing PEG channel capacity should not be offset against the franchise fee cap until the Commission can address the issue on a more complete record. The draft order also broadens the Commission's interpretation of an exclusion for certain PEG-related capital costs. These latter two conclusions directly address the concerns raised in your letter concerning the order's potential impact on PEG programming.

Again, thank you for your letter. Your views have been entered into the record of the proceeding and have been considered as part of the Commission's review. Please let me know if I can be of any further assistance.

Sincerely,  
  
Ajit V. Pai

Attachment